

PENALTY PROCEEDINGS — CAPITAL CASES

It is now your duty to advise the court as to the punishment that should be imposed upon the defendant for the crime of First Degree Murder. You must follow the law that will now be given to you and render an advisory sentence based upon your determination as to whether sufficient aggravating circumstances exist to justify the imposition of the death penalty or whether sufficient mitigating circumstances exist that outweigh any aggravating circumstances found to exist. The definition of aggravating and mitigating circumstances will be given to you in a few moments. As you have been told, the final decision as to which punishment shall be imposed is the responsibility of the judge. In this case, as the trial judge, that responsibility will fall on me. However, the law requires you to render an advisory sentence as to which punishment should be imposed—life imprisonment without the possibility of parole or the death penalty.

Although the recommendation of the jury as to the penalty is advisory in nature and is not binding, the jury recommendation must be given great weight and deference by the Court in determining which punishment to impose.

Your advisory sentence should be based upon the evidence of aggravating and mitigating circumstances that you have heard while trying the guilt or innocence of the defendant and the evidence that has been presented to you in these proceedings.

It is up to you to decide which evidence is reliable. You should use your common sense in deciding which is the best evidence, and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence.

You should consider how the witnesses acted, as well as what they said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?
2. Did the witness seem to have an accurate memory?
3. Was the witness honest and straightforward in answering the attorneys' questions?
4. Did the witness have some interest in how the case should be decided?
5. Did the witness' testimony agree with the other testimony and other evidence in the case?



6. Had the witness been offered or received any money, preferred treatment or other benefit in order to get the witness to testify?
7. Had any pressure or threat been used against the witness that affected the truth of the witness' testimony?
8. Did the witness at some other time make a statement that is inconsistent with the testimony he or she gave in court?
9. Was it proved that the witness had been convicted of a felony or a crime involving dishonesty?

You may rely upon your own conclusion about a witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

Expert witnesses.

Expert witnesses are like other witnesses with one exception—the law permits an expert witness to give an opinion. However, an expert's opinion is only reliable when given on a subject about which you believe that person to be an expert. Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

A defendant in a criminal case has a constitutional right not to testify at any stage of the proceedings. You must not draw any inference from the fact that a defendant does not testify.

Rules for deliberation.

These are some general rules that apply to your discussion. You must follow these rules in order to return a lawful recommendation:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your recommendation will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.
2. Your recommendation must be decided only upon the evidence that you have heard from the testimony of the witnesses, have seen in the form of the exhibits in evidence and these instructions.
3. Your recommendation must not be based upon the fact that you feel sorry for anyone, or are angry at anyone.
4. Remember, the lawyers are not on trial. Your feelings about them should not influence your recommendation.

5. It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited by talking to a lawyer about his or her testimony.
6. Your recommendation should not be influenced by feelings of prejudice, or by racial or ethnic bias, or by sympathy. Your recommendation must be based on the evidence, and on the law contained in these instructions.

Aggravating circumstances.

An aggravating circumstance is a standard to guide the jury in making the choice between the alternative recommendations of life imprisonment without the possibility of parole or death. It is a statutorily enumerated circumstance which increases the gravity of a crime or the harm to a victim.

An aggravating circumstance must be proven beyond a reasonable doubt before it may be considered by you in arriving at your recommendation. In order to consider the death penalty as a possible penalty, you must determine that at least one aggravating circumstance has been proven.

The State has the burden to prove each aggravating circumstance beyond a reasonable doubt. A reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to disregard an aggravating circumstance if you have an abiding conviction that it exists. On the other hand, if, after carefully considering, comparing, and weighing all the evidence, you do not have an abiding conviction that the aggravating circumstance exists, or if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the aggravating circumstance has not been proved beyond every reasonable doubt and you must not consider it in rendering an advisory sentence to the court.

It is to the evidence introduced during the guilt phase of this trial and in this proceeding, and to it alone, that you are to look for that proof.

A reasonable doubt as to the existence of an aggravating circumstance may arise from the evidence, conflicts in the evidence, or the lack of evidence. If you have a reasonable doubt as to the existence of an aggravating circumstance, you should find that it does not exist. However, if you have no reasonable doubt, you should find that the aggravating circumstance does exist and give it whatever weight you determine it should receive.

The aggravating circumstances that you may consider are limited to any of the following that you find are established by the evidence:

1. The capital felony was committed by a person previously convicted of a felony and on felony probation.

2. The defendant was previously convicted of a felony involving the use or threat of violence to the person.

The crime of Robbery is a felony involving the use or threat of violence to another person.

3. The capital felony was committed while the defendant was engaged in the commission of or flight after committing a robbery.
4. The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
5. The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification.

“Cold” means the murder was the product of calm and cool reflection.

“Calculated” means having a careful plan or prearranged design to commit murder.

A killing is “premeditated” if it occurs after the defendant consciously decides to kill. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

However, in order for this aggravating circumstance to apply, a heightened level of premeditation, demonstrated by a substantial period of reflection, is required.

A “pretense of moral or legal justification” is any claim of justification or excuse that, though insufficient to reduce the degree of murder, nevertheless rebuts the otherwise cold, calculated, or premeditated nature of the murder.

6. The victim of the capital felony was a law enforcement officer engaged in the performance of her official duties.

The State may not rely upon a single aspect of the offense to establish more than one aggravating circumstance. Therefore, if you find that two or more of the aggravating circumstances are proven beyond a reasonable doubt by a single aspect of the offense, you are to consider that as supporting only one aggravating circumstance.

If you find the aggravating circumstances do not justify the death penalty, your advisory sentence should be one of life imprisonment without possibility of parole.

Should you find sufficient aggravating circumstances do exist to justify recommending the imposition of the death penalty, it will then be your duty to determine whether the mitigating circumstances outweigh the aggravating circumstances that you find to exist.

Mitigating circumstances

A mitigating circumstance is not limited to the facts surrounding the crime. It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant. In other words, a mitigating circumstance may include any aspect of the defendant's character, background or life or any circumstance of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in this case.

A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. A mitigating circumstance need only be proved by the greater weight of the evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion as to the sentence to be imposed.

Among the mitigating circumstances you may consider are:

1. The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
2. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.
3. The age of the defendant (22) at the time of the crime.
4. The Defendant was severely physically abused as a child.
5. The defendant was verbally and emotionally abused as a child.
6. The defendant's mother chose his stepfather over her own children and failed to protect him from their stepfather's abusive treatment.
7. The Defendant witnessed the physical, verbal and emotional abuse of his siblings by his stepfather.
8. The defendant witnessed the physical, verbal and emotional abuse of his mother by his stepfather.
9. As a child, the Defendant had no loving father figure or male role model.
10. The Defendant has a close, loving relationship with his brother Anthony Nelson.
11. The Defendant is known by his family and friends to be generous and has contributed financially to the support of his mother and friends.
12. The Defendant was addicted to and abused drugs from an early age.

13. The defendant suffers from brain damage and brain functional deficits.
14. The defendant suffered head injury and possible traumatic brain injury.
15. In October, 2011, Travanti Williams, Defendant's cousin, was shot to death, which had a devastating emotional and psychological impact on the Defendant.
16. The Defendant had a two year relationship with Carrie Ellison during which she became pregnant with his child. She miscarried a few days after the death of Travanti Williams. Thereafter, the defendant began a period of significantly greater drug abuse.
17. Following the loss of his cousin and his girlfriend's miscarriage, the Defendant appeared to be distrustful of the motives of others, paranoid, and believed that a 'hit' was placed on his life and obtained a gun to protect himself.
18. Several of the defendant's friends and relatives were murdered, or died, which appeared to emotionally affect the Defendant.
19. The defendant has been diagnosed with, and is being treated for mental disorders with psychotropic medications.
20. The Defendant has also been diagnosed with Polysubstance Dependence, In remission in a controlled environment; and Passive and Dependent Personality traits.
21. The defendant has a full-scale IQ of 70, as assessed in 2013 by the WAIS IV.
22. The Defendant was cooperative with law enforcement and confessed.
23. The existence of any other factors in the defendant's character, background or life, or the circumstances of the offense that would mitigate against the imposition of the death penalty.

If one or more aggravating circumstances are established, you should consider all the evidence tending to establish one or more mitigating circumstances and give that evidence such weight as you determine it should receive in reaching your conclusion as to the sentence that should be imposed.

You have heard evidence about the impact of this homicide on the family, friends and community of Barbara Pill. This evidence was presented to show the victim's uniqueness as an individual and the resultant loss by Barbara Pill's death. However, you may not consider this evidence as an aggravating circumstance. Your recommendation to the court must be based on the aggravating circumstances and the mitigating circumstances upon which you have been instructed.

The sentence that you recommend to the court must be based upon the facts as you find them from the evidence and the law. If, after weighing the aggravating and mitigating circumstances, you determine that at least one aggravating circumstance is found to exist and that the mitigating circumstances do not outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are sufficient, you may recommend that a sentence of death be imposed rather than a sentence of life in prison without the possibility of parole. Regardless of your findings in this respect, however, you are neither compelled nor required to recommend a sentence of death. If, on the other hand, you determine that no aggravating circumstances are found to exist, or that the mitigating circumstances outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are not sufficient, you must recommend imposition of a sentence of life in prison without the possibility of parole rather than a sentence of death.

The process of weighing aggravating and mitigating factors to determine the proper punishment is not a mechanical process. The law contemplates that different factors may be given different weight or values by different jurors. In your decision-making process, you, and you alone, are to decide what weight is to be given to a particular factor.

In these proceedings it is not necessary that the advisory sentence of the jury be unanimous.

The fact that the jury can recommend a sentence of life imprisonment or death in this case on a single ballot should not influence you to act hastily or without due regard to the gravity of these proceedings. Before you ballot you should carefully weigh, sift, and consider the evidence, realizing that human life is at stake, and bring your best judgment to bear in reaching your advisory sentence.

If a majority of the jury, seven or more, determine that Brandon Lee Bradley should be sentenced to death, your advisory sentence will be:

A majority of the jury by a vote of _____, to _____
advise and recommend to the court that it impose the death penalty
upon Brandon Lee Bradley.

On the other hand, if by six or more votes the jury determines that Brandon Lee Bradley should not be sentenced to death, your advisory sentence will be:

The jury advises and recommends to the court that it impose a sentence of life imprisonment upon Brandon Lee Bradley without possibility of parole.

When you have reached an advisory sentence in conformity with these instructions, that form of recommendation should be signed by your foreperson, dated with today's date and returned to the court. There is no set time for a jury to reach a verdict. Sometimes it only takes a few minutes. Other times it takes hours or even days. It all depends upon the complexity of the case, the issues involved and the makeup of the individual jury. You should take sufficient time to fairly discuss the evidence and arrive at a well reasoned recommendation.

You will now retire to consider your recommendation as to the penalty to be imposed upon the defendant.